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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,526	03/25/2004	Makoto Nagai	65933-076	5937

7590 02/01/2006  
McDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER
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HUYNH, NAM TRUNG

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,526	<b>Applicant(s)</b> NAGAI, MAKOTO	
	<b>Examiner</b> Nam Huynh	<b>Art Unit</b> 2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/25/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Ofuji et al. (US 2003/0142568).

A. Regarding claims 1 and 6, Ofuji et al. discloses a base station comprising the following:

- A network interface unit that is an acquisition unit or receiver for acquiring a packet (page 3, paragraph 36).
- A time control unit that conducts calculation of delay time by comparing the current time from a clock and a source transmission time of a terminal device (page 4, paragraph 46).
- A control device (instruction unit) that controls transmission of a packet to a mobile station by assigning a channel for transmitting a packet to a mobile station (page 4, paragraph 41).
- A transmission path priority calculation unit (decision unit) within the control device, that calculates the transmission path situation priority by comparing

situations of a plurality of transmission paths formed between the base station and the mobile stations (page 5, paragraph 55). Additionally, this unit acquires transmission path information such as reception quality and delay profiles in the mobile station (page 5, paragraph 56).

B. Regarding claims 2 and 7, Ofuji et al. discloses a QoS (quality of service) priority calculation unit (quality detector) that acquires QoS information of packets to the users of mobile stations. The QoS information can include permissible delay time, class of service utilized for transmission, and the QoS-assured transmission rate (page 8, paragraphs 74-79).

C. Regarding claims 3 and 8, Ofuji et al. discloses a priority unification unit within the control device that unifies a plurality of individual priority calculation units and determines synthetic priorities (page 10, paragraph 92). As seen in figure 2, the priority unification unit is connected to the transmission path, QoS priority, and transmission waiting time calculation units. Ofuji et al. discloses that using the priority unification unit, the control device is capable of adaptively conducting channel assignment according to the traffic situation and the actual situation (page 12, paragraph 106). Therefore, the transmission rate and channel assignment can be modified or adjusted based on delay time and quality of service.

D. Regarding claim 4, Ofuji et al. discloses a communications system that comprises the following:

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- A terminal device (page 3, paragraph 34) that sends a data packet that includes QoS information such as permissible delay time and a packet transmission rate assured by the QoS (page 3, paragraph 38).
- A base station with the following units:
  - A transmission path priority calculation unit within a control device, that calculates the transmission path situation priority by comparing situations of a plurality of transmission paths formed between the base station and the mobile stations (page 5, paragraph 55). Additionally, this unit acquires transmission path information such as reception quality and delay profiles in the mobile station (page 5, paragraph 56).
  - A QoS (quality of service) priority calculation unit that acquires QoS information of packets to the users of mobile stations. The QoS information can include permissible delay time, class of service utilized for transmission, and the QoS-assured transmission rate (page 8, paragraphs 74-79).
  - A priority unification unit within the control device that is capable of adaptively conducting channel assignment according to the traffic situation and the actual situation based on the transmission path priority calculation unit and the QoS priority calculation unit (page 12, paragraph 106).

E. Regarding claim 5, Ofuji et al. discloses a method in which a packet is sent to the base station by a terminal device via the network (page 19, paragraph 167). From this packet, QoS information and transmission destination user identification data is

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acquired by the signal processing unit (page 19, paragraph 167). As mentioned above in "D" the QoS information may include permissible delay time. The base station and control device can then assign a channel as occasion may demand according to the reception state of the mobile station at the time the packet is transmitted (page 20, paragraph 176).

F. Regarding claim 9, Ofuji et al. discloses that a terminal device sends a data packet to the base station. This terminal device can be a personal computer (page 3, paragraph 34). Since the terminal device is capable of being a computer, it is inherent that the data packet could be a program or instructions for the base station to transmit data to a mobile station. Therefore, the limitations of this claim are rejected as applied to claim 1.

G. Regarding claim 10, based on what is stated in regards to claim 9, the limitations are rejected as applied to claim 2.

H. Regarding claim 11, based on what is stated in regards to claim 9, the limitations are rejected as applied to claim 3.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nam Huynh whose telephone number is 571-272-5970. The examiner can normally be reached on 8 a.m.-5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NTH  
1/23/06



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